

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 6, 2020 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, AUGUST 6, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, AUGUST 5, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0075006 HALDEMANCORP BUILDERS v. HUCKABEE, CLIFTON

Cross-Defendant Curt Gomes' demurrer to the cross-complaint is continued to Thursday, August 20, 2020 at 8:30 a.m. in Department 42 to be heard in conjunction with the pending motion to quash and motion to compel.

2. S-CV-0040180 CROWDER, MARY v. PURPLE COMMUNICATIONS

Plaintiff's Motion for Class Certification

Upon reviewing the parties' briefing related to plaintiff's motion for class certification, it is noted that plaintiff refers to a second amended complaint. The court file, however, does not reflect any such pleading has been filed with this court. It appears this second amended complaint may have been filed with the Eastern District when the case was removed to the federal court. While this court received the order of remand, it did not receive any other documentation filed with the federal court.

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The court is unable to properly review the motion without the operative pleading being filed with this court. Plaintiff is instructed to present an endorsed filed copy of the second amended complaint, apparently filed with the Eastern District, to the civil clerks for filing. The clerks shall file the second amended complaint and enter it into the court's case management system. The second amended complaint shall be filed no later than August 21, 2020.

The motion is continued to Thursday, September 3, 2020 at 8:30 a.m. in Department 42.

3. S-CV-0041420 BRISCO, LORNA v. MERITAGE HOMES OF CA

Cross-Defendant Timberlake Cabinetry's Motion for Determination of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

Cross-Defendant Candelaria Unique Fence Works' Motion for Determination of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

Cross-Defendant Victory Fire Protection, Inc.'s Motion for Determination of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

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4. **S-CV-0041704 GREENE, RICHARD v. BOZORGZAD, HOSSEIN**

Defendant HBF Holdings, LLC's Motion to Strike, Dismiss, and Request for Sanctions

Defendant HBF Holdings LLC's motion to strike complaint and dismiss all causes of action and request for sanctions is dropped from the calendar. Plaintiff filed a dismissal of the entire action on July 21, 2020.

5. **S-CV-0042062 AMERICAN EXPRESS v. CIOLI, MARY**

Plaintiff's Motion to Set Aside Judgment

Plaintiff's motion to set aside judgment is granted under Code of Civil Procedure section 473(d). The judgment entered on July 8, 2019 is vacated. The entire action, at the request of plaintiff, is dismissed without prejudice.

6. **S-CV-0042228 SPINE & NEUROSURGERY v. BLUE SHIELD OF CA**

The motion for summary judgment and the motion to seal documents related to the summary judgment are continued to Thursday, September 17, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

7. **S-CV-0043042 BLANCO, ENEDINA v. LAZZARESCHI, RICHARD**

Intervenor Jesusita Herrera's Motion for Leave of Court to Intervene

Intervenor Jesusita Herrera's motion for leave to intervene is granted. Jesusita Herrera may file the complaint in intervention by August 21, 2020.

8. **S-CV-0043468 SIMPSON, MELODY v. BANK OF NY MELLON**

The motion for judgment on the pleadings is continued to Thursday, August 27, 2020 at 8:30 a.m. in Department 42 to be heard in conjunction with motion for summary judgment.

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9. **S-CV-0043706 FELTUS-WRIGHT, CHERY v. KELLY-SMITH, S.A. MEG**

Plaintiffs' Motion to Compel Further Responses to Interrogatories

The motion is granted. Defendant S.A. Meg Kelly-Smith shall provide further verified responses, without further objections, to form interrogatories nos. 16.1 through 16.9 and special interrogatories nos. 20 through 27 and 32 through 34 by August 28, 2020.

Plaintiffs' Motion to Compel Further Responses to Request for Production of Documents

The motion is denied.

10. **S-CV-0043836 BPX COMMERCIAL v. SIERRA COLLEGE ESTATES**

Plaintiff's Motion for Relief from Dismissal

Plaintiff's motion is granted under Code of Civil Procedure section 473(b). The dismissal entered on May 18, 2020 is vacated. Plaintiff shall schedule its motion to enforce settlement for hearing on the civil law and motion calendar for a date no later than October 1, 2020.

11. **S-CV-0043844 GRACIA, NICOLE v. RICHARDSON, DOMINIC**

Defendant Dominic Richardson's demurrer and motion to strike are dropped from the calendar in light of his dismissal from the action entered on May 28, 2020.

12. **S-CV-0043926 RICK MARTIN CONST & GEN ENG v. IRA SERVICES**

Defendant's motion to expunge is continued to Thursday, August 27, 2020 at 8:30 a.m. in Department 42 to be heard in conjunction with the scheduled motion to compel.

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13. **S-CV-0044206 WOODWORTH, ELVIDA v. KEPHART, MORGAN**

Defendant's Demurrer to the Complaint

Defendant's demurrer to the complaint is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Plaintiff alleges she was injured while skiing when the snowboarding defendant collided with her. The doctrine of "primary assumption of the risk" limits a defendant's duty of care toward a plaintiff, and for that reason may be challenged by demurrer. (See *Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, 162–168.) Defendant points to case law holding that risks inherent in skiing fall within the primary assumption of risk, such that no duty is owed by a defendant skier or snowboarder to an injured plaintiff skier. (See, e.g., *Mastro v. Petrick* (2001) 93 Cal.App.4th 83 [skiing and snowboarding].) Those participating in sports have no duty to protect other participants from the risk of harm inherent in the sport, but they do have a duty not to increase the inherent risk, and consequently not to engage in conduct so reckless that it is totally outside the range of ordinary activity involved in the sport. (*Shin v. Ahn* (2007) 42 Cal.4th 482, 486.) Ultimately, in order to determine whether defendant's conduct was reckless and not shielded by primary assumption of risk, plaintiff must show the conduct was "so reckless as to be totally outside the range of the ordinary activity involved in the sport." (*Knight v. Jewett* (1992) 3 Cal.4th 296, 320.) As the case of *Towns v. Davidson* (2007) 147 Cal.App.4th 461, cited by defendant, points out: " 'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur. [Citations.] Recklessness, unlike negligence, involves more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions' but rather rises to the level of a 'conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.' [Citations]"

In this case, plaintiff alleges that defendant was snowboarding at a high rate of speed not expected at a beginner/intermediate slope and that defendant was "engaged in reckless and/or willful misconduct as to be totally outside the range of the ordinary activity involved in the sport of skiing and/or snowboarding."

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Whether that proves to be the case is a question of fact that cannot be resolved at the demurrer stage. Since there are sufficient factual allegations pleaded to support plaintiff's negligence cause of action, the demurrer is overruled.

14. S-CV-0045020 IN RE MATTER OF GARD E.I., LLC

Amended Petition for Approval for Transfer of Payment Rights

The amended petition for approval for transfer of payments rights is continued to August 27, 2020 at 8:30 a.m. in Department 42. The matter is continued for petitioner to provide further clarification on the following:

- (1) Expressly outline the prior cases brought by the transferor, Erikka Olivarez, where she sought transfer of structured settlement payments including (1) case number; (2) case name; (3) court where transfer was brought; and (4) outcome of the request (Insurance Code section 10139.5(b)(10), (11).);
- (2) Address discrepancies between transferor's prior declarations where she sought transfer of payments and the declaration filed in support of this motion. For example, in a prior case where Ms. Olivarez sought to transfer payments, Place Court Case No. SCV-43652, she did not mention the loss of employment but, rather, studying to be a realtor. (Erikka Olivarez declaration filed in SCV-43652, ¶11.); and

Ms. Olivarez's declaration filed in support of the amended petition states she is currently seeking independent professional advice regarding the transfer and further information would be provided to the court. (Olivarez declaration ¶12.) The court has not received any further information regarding Ms. Olivarez seeking independent financial and/or legal advice and requests an update on this issue.